

REFERENCE TITLE: law enforcement merit system; fees

State of Arizona  
Senate  
Forty-seventh Legislature  
Second Regular Session  
2006

## **SB 1165**

Introduced by  
Senators Verschoor: Aguirre; Representatives Jones, Konopnicki, McComish,  
Paton, Stump

### AN ACT

AMENDING SECTION 38-1004, ARIZONA REVISED STATUTES; RELATING TO THE LAW ENFORCEMENT MERIT SYSTEM COUNCIL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2       Section 1. Section 38-1004, Arizona Revised Statutes, is amended to  
3 read:

4           38-1004. Appeals: hearings

5       A. A classified law enforcement officer who is suspended, demoted or  
6 dismissed by the department head, after a hearing and review before the merit  
7 system council, may have the determination of the council reviewed upon writ  
8 of certiorari in the superior court of the county in which the law  
9 enforcement officer resides. If the determination of the council is  
10 overruled by the court, the law enforcement officer shall be reinstated in  
11 the officer's position and the officer shall be reimbursed for any  
12 compensation withheld pending determination by the council and court.

13       B. If the order of the department head was for a suspension greater  
14 than sixteen hours, demotion or dismissal and the court exonerates the  
15 officer, the court may award, in whole or in part, the reasonable costs and  
16 attorney fees that the officer incurred **OR WERE INCURRED ON BEHALF OF THE LAW**  
**ENFORCEMENT OFFICER** in the court proceedings. The award of attorney fees by  
17 the court shall not exceed fifteen thousand dollars. An award of attorney  
18 fees does not apply if either of the following applies:

19           1. The order of the department head was not for disciplinary purposes  
20 but was for administrative purposes such as a reduction in force.

21           2. The disciplinary action related to off-duty activities unrelated to  
22 the required duties of the law enforcement officer. If the department head  
23 appeals the decision of the court, the court's award of any costs or attorney  
24 fees to an officer shall be stayed pending the conclusion of the appeal. If  
25 the department head's decision is upheld on appeal, the award of costs or  
26 attorney fees in favor of the officer shall be reversed.

27       C. If a law enforcement officer of a county, city or town described in  
28 section 38-1007 appeals from a decision of a department head in connection  
29 with the law enforcement officer's suspension greater than sixteen hours,  
30 demotion or dismissal and the county, city or town maintains a merit system  
31 or civil service plan for its employees, and the merit system or civil  
32 service plan appeals board exonerates the officer, the merit system or civil  
33 service plan appeals board may award, in whole or in part, the reasonable  
34 costs and attorney fees that the law enforcement officer incurred **OR WERE**  
**INCURRED ON BEHALF OF THE LAW ENFORCEMENT OFFICER** in connection with the  
35 appeal. The amount of the award by the merit system or civil service plan  
36 appeals board shall not exceed ten thousand dollars. If the department head  
37 appeals the decision of the merit system or civil service appeals board, the  
38 award of attorney fees shall be stayed pending the conclusion of the  
39 appeal. If the officer appeals to court the decision of the merit system or  
40 civil service plan appeals board, or of the city or town council or board of  
41 supervisors if the city, town or county has no such board, and the court  
42 exonerates the officer, the court may award, in whole or in part, the  
43 reasonable costs and attorney fees that the law enforcement officer incurred

1       **OR WERE INCURRED ON BEHALF OF THE LAW ENFORCEMENT OFFICER** in connection with  
2       the appeal. The award of attorney fees by the governing body or court shall  
3       not exceed fifteen thousand dollars. An award of attorney fees under this  
4       subsection does not apply if either of the following applies:

5           1. The order of the department head was not for disciplinary purposes  
6       but was for administrative purposes such as a reduction in force.

7           2. The disciplinary action related to off-duty activities unrelated to  
8       the required duties of the law enforcement officer. If the department head  
9       appeals the decision of the court, the court's award of any costs or attorney  
10      fees to an officer shall be stayed pending the conclusion of the appeal. If  
11      the department head's decision is upheld on appeal, the award of costs or  
12      attorney fees in favor of the officer shall be reversed.

13          D. A department head shall have the right to have all council policies  
14       and decisions reviewed upon writ of certiorari in the superior court of the  
15       county in which the law enforcement officer resides and legal counsel for the  
16       department head shall be provided by the county or city attorney in whose  
17       jurisdiction the department lies.